

Management Board minutes

Monday 27 April 2015

Members and other attendees present

Ailsa Beaton	Non-executive Director
Simon Entwisle	Deputy Chief Executive Officer
Christopher Graham	Information Commissioner (chair)
Andrew Hind	Non-executive Director
David Smith	Deputy Commissioner Data Protection
Graham Smith	Deputy Commissioner Freedom of Information
Ian Watmore	Non-executive Director
Nicola Wood	Non-executive Director
Peter Bloomfield	Senior Corporate Governance Manager (secretariat)
Neil Bostock	Corporate Governance Manager

1. Introductions and apologies

- 1.1. There were no introductions or apologies.

2. Declaration of interests

- 2.1. There were no declarations of interest.

3. Matters arising from the meeting of 28 April

- 3.1. The minutes of the last meeting had been agreed by correspondence. There were no amendments needed.
- 3.2. There was one action point shown as outstanding; for the Non-executive Directors to consider how to follow up their meeting with the Ministry of Justice (MOJ) about the

recruitment of the new Commissioner. Ian Watmore advised that this action had been cleared and there had been a very positive reaction from the MOJ to the views of the Non-executive Directors.

- 3.3. Christopher Graham advised that he was interested in involving the Non-executive Directors in monitoring various ICO projects. He would approach the Non-executive Directors shortly with proposals.

4. Commissioner's forward look

Issues affecting the ICO

- 4.1. Christopher Graham provided an update on issues affecting the ICO; noting that matters relating to the Triennial Review and industrial relations had been usefully discussed in an earlier meeting.
- 4.2. The imminent general election generated uncertainty for the ICO in respect of possible changes to the legislation it regulates and new policies being generated which had implications for information rights. The need for the ICO to be able to respond quickly was highlighted.
- 4.3. There seemed to be more prospect of progress in the agreeing of the EU Data Protection Regulation.
- 4.4. The ICO is hosting the European Spring Conference 2015 which will bring together Europe's data protection authorities and other observer organisations (eg Council of Europe, European Commission) in Manchester. The Non-executive Directors were asked to contact the Commissioner if they wished to attend.
- 4.5. The Commissioner advised that the advert for the Deputy Commissioner (Data Protection) post had appeared in the Sunday Times and was being advertised online. Final interviews would take place on 10 July.

Risk register

- 4.6. The risk register was introduced for information and discussion.
- 4.7. Simon Entwisle updated the meeting on the future of accommodation in Wilmslow. This was one of the risk factors. The current lease ends on 31 December 2016 and the ICO had been in negotiation with the MOJ and the Government Property Unit as to the future position for the ICO.
- 4.8. There were concerns that for several of the risks the risk status after mitigation was the same as before. This

either suggested that the risk status had been assessed incorrectly or the mitigating actions had no effect. There was also uncertainty about the dates of some mitigating actions.

- 4.9. The status of the risk to the ICO's registration fee income arising from the proposed EU Data Protection Regulation (which would remove the duty to register if it stayed as currently proposed) was questioned. Discussion centred on how the ICO would not lose its income but rather would face uncertainty as to what level of income any new method of funding would provide. The need for a long enough transition period for any change in how the ICO was funded was highlighted. The need for stability had to be built in.
- 4.10. The delegated amount of capital expenditure of £100k the MOJ planned to impose on the ICO (rather than the £850k the ICO wished for) was a point of discussion with the MOJ finance team. The lower amount would severely constrain the ICO's ability to bring in much needed IT projects. And whilst the MOJ indicated that the limit may be raised after quarter 1, any delay would make completing the projects to schedule more difficult.
- 4.11. The perception that the ICO might not be keeping up with new technology and its impact on information rights was raised. The ICO was doing much, for example in staffing up the Technology Team and making use of the ICO's Technology Reference Panel. And, as in the case of drones, the ICO was liaising with other regulators and interested parties, such as the Civil Aviation Authority.

Action point 1: Peter Bloomfield to check with the technology team as to whether or not the technology report circulated last summer would be updated?

- 4.12. Simon Entwisle highlighted a different angle to the technology risk linked to the ICO's own use of new technology and IT. An IT Strategy would be brought to the next Management Board.

Action point 2: Peter Bloomfield to add the IT Strategy to the agenda for the next Management Board meeting.

- 4.13. In terms of the people risk it was noted that the Remuneration Committee was down as an existing assurance. However, meeting dates needed to be confirmed for 2015/16.
- 4.14. It was confirmed that the ICO did follow a code when deciding whether to prosecute or not.

5. Staff engagement and industrial relations

- 5.1. Simon Entwisle updated the Board on the current dispute with the PCS over the July 2014 pay award which involved the removal of contractual progression pay. Over half of the staff had accepted the consequent changes in their terms and conditions. The award had now been imposed on those staff who had not. There had been several strike days and there was now a work to rule in place. When asked, PCS described the legal basis for their dispute as being a national vote for strike action in respect of a 2013 pay dispute.
- 5.2. In the main the impact was felt to be more on individual members of staff's ability to volunteer for what might well be seen as development opportunities (eg training others), rather than on the overall performance of the ICO.
- 5.3. There was ongoing discussion with the PCS over the dispute, and with both the PCS and FDA over the July 2015 pay award. In the case of the 2015 pay award the government guidance was quite clear in that there was very little scope for anything other than a straight 1% cap.
- 5.4. Christopher Graham explained that management side had offered an independent review of how the decision to increase ET salaries last year had been made and communicated, and of the role of the Remuneration Committee. However there were still discussions ongoing with the PCS over the terms of reference.

6. Registration fee strategy

- 6.1. Simon Entwisle introduced discussion on the ICO strategy for the registration fee given that the proposed EU Data Protection Regulation as it stood removed the need for organisations to register. This did not preclude charging data controllers but there would need to be a change in the process and this provided opportunities.
- 6.2. There was also the possibility of short term changes and the MOJ were keen on the fee not only reflecting the size of the data controller but also how much data processing they did (ie linking the fee to the risk associated with the data controller).
- 6.3. In addition the ICO was keen to move to a position from which it could more closely match the income received via registration to its costs; smoothing out end of year fluctuations but also being able to reduce the fee if, for

example, compliance with the legal requirement to register increased.

6.4. The Board was supportive of the approach. It built on the existing element of polluter pays and helped the ICO move towards greater compliance in registration. Any change did however introduce uncertainty in what is the ICO's main source of income. And it had proved difficult in the past to estimate accurately the impact of changes to the registration fee structure.

6.5. In respect of the Regulation removing the requirement to register, the Commissioner would need a robust system of identifying and enforcing payment of a fee. This could involve fines. Currently the ICO did work with both Companies House and HMRC on promoting the need to register.

Action point 3: David Smith to consider the possibility of moving to a civil monetary penalty route rather than a criminal offence for non-registration with the ICO.

6.6. Estimating what the registration fee income will be year on year (even without change) is difficult. Executive Team would shortly agree an estimate for budget purposes and it was intended to discuss the estimate at the next Management Board.

Action point 4: Simon Entwisle to bring a discussion paper to the next Management Board on the level of fee income expected for 2015/16.

7. Committee self assessment

7.1. Peter Bloomfield introduced the committee self assessment survey completed last autumn. The results had been seen and discussed by the other committees and were coming to Management Board now for any final comments (in particular) the new Non-executive Directors might have. There were no particular comments.

7.2. An electronic survey had been used for the Committee self assessment for a few years now and views on its continuing suitability were sought. One suggestion was for face to face interviews but there were no strong feelings either way.

8. Annual report and accounts 2014/15

8.1. Peter Bloomfield provided an update on development of the annual report and accounts for 2014/15. The most up to

date version of the annual report section was provided and members were asked for their comments by close 8 May. The accounts were on a different track.

- 8.2. It was confirmed that whilst the document would be finalised and cleared at Audit Committee, Board members who did not attend Audit Committee would get a chance to input by correspondence. Timing precluded discussion at the July Management Board.

Action point 5: Peter Bloomfield to circulate the draft annual report to members for any comments by 8 May.

- 8.3. The Board was asked to confirm whether or not the draft strategic report, directors' report and governance statement were generally covering the right issues and needed any amendment at this stage. Some detailed comments were provided.
- 8.4. In addition the Board was asked if it was content with the draft assessment in the governance statement relating to how well the ICO complied with the corporate governance in central government departments: Code of good practice 2011. Whilst the ICO did not follow the code in all areas it had identified in the governance statement where it diverged and explained the reasons for this. The Board agreed with the relevant wording in the governance statement.

9. Register of interests format

- 9.1. Peter Bloomfield introduced a discussion on the register of interests. Concerns had been raised at the last Management Board about the risk of detailing where investments were held. There had been some discussion at Audit Committee.
- 9.2. What was important in terms of the purpose of the register was for transparency as to any potential conflict of interests for members of the Board. For example shareholdings or similar investments, which could be influenced by ICO action, should be covered. But simply buying financial products such as pensions or mortgages were less likely to need including. The risk of potential fraud also needed to be considered as would the inclusion of a de-minimis level (and what this would be).
- 9.3. It was agreed that Christopher Graham and Peter Bloomfield should consider the matter further and come up with a proposed format for the register taking account of the

comments made and the example of the Financial Conduct Authority.

Action point 6: Christopher Graham and Peter Bloomfield to consider the register of interest further and to come up with a proposed format for the register of interests.

10. Finances

- 10.1. The financial report for the year to March 2014 was presented for information and discussion. Registration fee income was above expectations but given the level of work on accommodation, to reduce future dilapidations on the Wilmslow property, and the level of IT project work, expenditure had also increased. There would be no handing back of fee income to the Consolidated Fund.
- 10.2. As for the 2015/16 financial year grant in aid of £3.7m had been agreed, £50k down on the initial agreement for last year.
- 10.3. During the course of the year it had been noted that the ICO needed to do more on salary projections and this work was now in hand. This was important as the ICO's staffing complement was to increase slightly.
- 10.4. The Board questioned what was covered by the "entertaining" budget heading. This budget head provided for working lunches when necessary.

11. Performance against the ICO Plan

- 11.1. The report detailing performance against the ICO Plan 2014-2017 was presented for information. The Board questioned whether actions 6.7, relating to diversity, and 6.8 on knowledge management were indicated as amber. It was confirmed that they should be shown as green.

12. Issues reports

- 12.1. Reports on various areas of ICO work were considered.
Operations
- 12.2. Freedom of information receipts and closures were marginally down on the previous year, but more decision notices had been completed. There was significant improvement in the speed of closure of freedom of information complaints.

12.3. Data protection complaints were also down on the previous year, due to fewer ineligible complaints being received. As with freedom of information the speed of closure had improved.

12.4. It was difficult to estimate the effect of the strikes during the year on performance.

Information rights

12.5. The Board discussed the potential for the ICO and others to do more to stop nuisance calls. This was an area about which the public were very concerned but where the ICO might be limited in what it could do and it might not meet expectations. It was emphasised that the ICO was increasing resources in its Enforcement Team to ensure full use was made of the recent change in the Privacy and Electronic Communications Regulations to remove the threshold for the ICO being able to take action. In addition the ICO was still working with telecommunications companies and other regulators to reduce the problem as much as possible. It was recognised that it was a difficult area to regulate but more work could be done.

12.6. Graham Smith updated the Board on the move of the Public Sector Information Regulations complaints function to the ICO.

12.7. David Smith noted that recent court judgments, not just from the EU Court of Justice but also in the UK, indicate a trend towards courts being ready to take account of privacy issues to a greater extent than previously.

Organisational Development

12.8. It was reported that the total headcount for the ICO was expected to rise to 417 over the course of this financial year.

12.9. Staff turnover was not necessarily an issue at present. The lack of turnover at Heads of Department level was noted as a possible factor in those at lower grades moving outside the ICO for promotion opportunities.

13. Executive Team meetings

13.1. The minutes of Executive Team meetings held since the last Management Board were presented for information.

14. Audit Committee

- 14.1. The minutes of the last Audit Committee meeting was presented for information. Ian Watmore, chair of the committee, noted the successful implementation of the new finance system ahead of schedule and to budget. Those involved were thanked for their hard work.

15. Any other business

- 15.1. There was no other business.